

502 KAR 12:010. Sexual assault forensic-medical examination protocol.

RELATES TO: KRS 72.020, 209.020(4), 209.030, 209A.020(4), 209A.030, 211.600, 216B.015, 216B.400, 216B.990(3), 314.011(14), Chapter 346, 421.570, 510.010-510.140, 524.140, 530.020, 530.064(1)(a), 531.310, 600.020, 620.030, 42 U.S.C. 3796gg-4, 45 C.F.R. 164.512

STATUTORY AUTHORITY: KRS 216B.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 216B.400(2) authorize the cabinet to promulgate administrative regulations developing a statewide medical protocol for sexual assault examinations. This administrative regulation establishes the procedures to be followed by medical staff before, during, and after the examination of a victim of a sexual assault.

Section 1. Definitions. (1) "Basic treatment" means basic medical care provided to victims of sexual offenses including a medical screening, an examination for medical injuries, treatment for sexually transmitted infections, and, if appropriate, delivery of postexposure HIV prophylaxis.

(2) "Designated storage facility" means an examination facility, local law enforcement agency, or other agency that has an agreement with an examination facility to provide secure storage for samples collected during sexual assault forensic-medical examinations that are not immediately reported to law enforcement.

(3) "Examination Facility" means a sexual assault examination facility as defined in KRS 216B.015(26).

(4) "Qualified medical professional" means any physician's assistant or advanced practice registered nurse whose training and scope of practice include performance of speculum examinations.

(5) "Rape crisis center advocate" means a victim advocate who:

(a) Has met the requirements of KRS 421.570; and

(b) Works or volunteers for a rape crisis center regulated by the Cabinet for Health and Family Services, pursuant to KRS 211.600 and 920 KAR 2:010.

(6) "Victim" means a person who may have suffered direct, threatened, or attempted physical or emotional harm from the commission or attempted commission of:

(a) A sexual offense, pursuant to KRS 510.010 to 510.140;

(b) Incest, pursuant to KRS 530.020; or

(c) An offense relating to:

1. The use of a minor in a sexual performance, pursuant to KRS 531.310; or

2. An unlawful transaction with a minor, pursuant to KRS 530.064(1)(a).

Section 2. Preforensic-Medical Examination Procedure. If a person seeking treatment as a victim arrives at an examination facility, the appropriate staff at the facility prior to conducting the forensic-medical examination shall comply with the following:

(1) Reporting to the Rape Crisis Center Advocate. (a) Contact the rape crisis center to inform the on call advocate that a victim has arrived at the examination facility for an examination; and

(b) Upon arrival of the advocate, ask if the victim wishes to have a rape crisis center advocate present for the examination or otherwise available for consultation;

(2) Limited Mandatory Reporting to the Cabinet for Health and Family Services. (a) If the victim is less than eighteen (18) years old:

1. Assess whether the victim may be an abused, neglected, or dependent child, as defined

in KRS 600.020. In cases of suspected child abuse, neglect, or dependency, medical personnel shall immediately report the incident to the Cabinet for Health and Family Services; a local or state law enforcement agency; or the Commonwealth's attorney or county attorney in accordance with KRS 620.030; and

2. If a report is made, consult with the Cabinet for Health and Family Services or law enforcement to determine whether referral to a regional children's advocacy center or other specialized treatment facility is in the best interest of the child; and

(b) If the victim is eighteen (18) years old or older:

1. The examination facility shall not contact law enforcement or release any information to law enforcement without the victim's authorization;

2. Determine whether a mandatory reporting law addressing spouse abuse or abuse of a vulnerable adult applies:

a. Assess whether the victim may be an adult as defined in KRS 209A.020(4); and

b. Assess whether the victim may be an adult as defined in KRS 209.020(4); and

3. If subparagraph 2.a or 2.b of this paragraph applies, immediately report the incident to the Cabinet for Health and Family Services and notify the victim of the report;

(3) Optional Reporting to Law Enforcement.

(a) Ask the victim whether she or he wants to report the incident to law enforcement;

(b) If the victim chooses to report the incident to law enforcement, obtain the victim's consent for treatment and authorization for release of information, and contact law enforcement; and

(c) If the victim chooses not to report to law enforcement, information or samples shall not be released to law enforcement, unless the victim has specifically authorized the release of information or samples;

(4) Inform the victim that all statements made during the interview and the sample collection process to physicians, nurses, other hospital personnel, or law enforcement officers are not privileged and may be disclosed;

(5) Provide a detailed explanation of the forensic-medical examination, the reasons for conducting the forensic-medical examination and the effect on a criminal prosecution if a forensic examination is not performed or reported to law enforcement;

(6) Advise the victim that photographs and other documentation, if released to law enforcement, may be used as evidence and that the photographs may include the genitalia;

(7) Advise the victim that the forensic-medical examination, including basic treatment, shall be conducted free of charge, but costs related to additional medical treatment may be incurred;

(8) Inform the victim that consent for the forensic sample collection process may be withdrawn at any time during the examination;

(9) Inform the victim of the need for a physical examination due to the risk of sexually transmitted infections, including HIV, pregnancy, injury, or other medical problems whether or not the victim chooses to have the evidence collected;

(10) Obtain documented consent from the victim prior to conducting the forensic-medical examination; and

(11) Document that the procedures established in this section are completed.

Section 3. The Forensic-Medical Examination. (1) A physical examination may be conducted for basic treatment and to collect samples in all cases of sexual assault, regardless of the length of time that may have elapsed between the time of the assault and the examination itself.

(2) If the sexual assault occurred within ninety-six (96) hours prior to the forensic-medical examination, a Kentucky State Police Sexual Assault Evidence Collection Kit shall be used.

This kit consists of:

- (a) Instructions;
- (b) Evidence envelope;
- (c) Comb; and
- (d) Swabs.

(3) Personnel in attendance during the forensic examination shall be limited to the following persons:

(a) Examining physician, sexual assault nurse examiner, as defined in KRS 314.011(14), or qualified medical professional;

- (b) Attending nurse and additional nursing personnel;
- (c) Rape crisis center advocate; and
- (d) Other persons who are:

- 1. Dictated by the health needs of the victim; or
- 2. Requested by the victim.

(4) Photographs, including photographs of the genitalia, may be taken if the appropriate equipment is available at the examination facility, precautions are taken to ensure confidential storage, and the victim has consented to having photographs taken.

(5) The following types of samples may be collected during the examination:

- (a) Hairs from the head or pubic region;
- (b) Fingernail cuttings, swabs, or scrapings;
- (c) Clothing fibers, or other trace evidence;
- (d) Bodily fluids, including:

- 1. Semen;
- 2. Blood;
- 3. Sweat; and
- 4. Saliva;

(e) Clothing; and

(f) Other samples that may be presented as evidence at a trial.

(6) Samples shall not be collected if the victim is unconscious unless the collection is consistent with appropriate and necessary medical treatment.

(7) The collection of samples shall cease immediately if the victim dies during the process.

(8) The coroner shall be contacted if the victim dies during the sexual assault medical-forensic examination and the samples process and the evidence collected up to that time shall be delivered to the coroner or the coroner's designee, Collection of samples may be completed by medical personnel if requested by the coroner.

(9) The coroner shall be notified in accordance with KRS 72.020 and samples shall not be collected if the victim is deceased upon arrival at the examination facility.

Section 4. Postforensic Examination Procedures. At the conclusion of the forensic-medical examination the appropriate personnel at the examination facility shall provide the victim with:

(1) Information regarding follow-up procedures and appointments concerning:

- (a) Sexually transmitted infections, including HIV;
- (b) Pregnancy;
- (c) Urinary tract or other infections; and
- (d) Similar assault related health conditions;

(2) Information regarding the availability of follow-up counseling and support services available from a rape crisis center or other mental health agency;

(3) Information from the law enforcement officer regarding who to contact about the prosecution of the offense in cases reported to law enforcement;

- (4) A garment or other appropriate clothing to wear in leaving the examination facility, or assistance in obtaining other personal clothing;
- (5) Information about:
 - (a) The Crime Victim's Compensation Board, as established in KRS Chapter 346; and
 - (b) The following administrative regulations providing aid to a crime victim:
 - 1. 107 KAR 1:005;
 - 2. 107 KAR 1:010;
 - 3. 107 KAR 1:015;
 - 4. 107 KAR 1:025;
 - 5. 107 KAR 1:040; and
- (6) If the victim chooses not to report to law enforcement, information about:
 - (a) Length of time samples will be stored;
 - (b) Whom the victim may contact to file a report or authorize the release of samples; and
 - (c) Whether the samples will be automatically destroyed or transferred for extended storage if the victim does not request release of samples to law enforcement within the specified period.

Section 5. Storage and Transfer of Samples. (1) Chain of custody documentation shall be maintained throughout all storage and transfer procedures.

(2) All samples shall be stored under circumstances that restrict access to reduce the likelihood of tampering and protect the chain of custody. The number of individuals with access to the storage area shall be limited to the minimum number possible.

(3) The following information shall be maintained for each sample stored:

- (a) Patient identifier;
- (b) Date collected;
- (c) Description of sample;
- (d) Signature of the collecting medical professional;
- (e) Date and time entered into storage and signature of person receiving; and
- (f) Date and time removed from storage, signature of person removing, and purpose of removal.

(4) If the victim chooses to report the incident to law enforcement as a crime or has authorized the release of samples to local law enforcement for secure storage, the examination facility shall transfer samples to local law enforcement officials as soon as possible.

(5) If the victim chooses not to report the incident to law enforcement as a crime when the examination is performed, the examination facility shall arrange for the samples to be stored securely for at least ninety (90) days.

(6) The examination facility may either store samples or transfer samples to a designated storage facility.

(7) The examination facility shall maintain documentation regarding transfers of samples.

(8) Facilities or agencies providing secure storage of samples under this section shall assure compliance with subsections (5) and (6) of this Section within a locked or otherwise secure container in a limited-access location.

(9) Storage agreements:

- (a) May be long-term or case specific; and
- (b) Shall designate sending and receiving facilities and certify compliance with subsections (1) through (9) of this section.

(10) If the victim chooses not to report the incident to law enforcement as a crime when the examination is performed, samples shall not be released to a law enforcement agency except if:

- (a) The local law enforcement agency receiving samples has entered into an agreement to serve as a designated storage facility;
- (b) The victim later chooses to file a delayed report; or
- (c) Pursuant to court order.

Section 6. Removal of Samples from Secure Storage. Samples shall not be permanently removed from storage except if:

- (1) The victim authorizes release of samples to a law enforcement agency or other entity;
- (2) The time frame for storage has lapsed, as established by Section 5(5) of this administrative regulation;
- (3) The victim authorizes the destruction of the samples; or
- (4) A court order has been issued for release or destruction.

Section 7. Destruction of Samples. (1) Ninety (90) days after the sample was collected, the examination facility or designated storage facility may destroy the sample at any time in accordance with the facility's policy.

- (2) Destruction shall be conducted using biohazard precautions.
- (3) Destruction shall be documented by the examination facility or designated storage facility that stored the samples.
- (4) Samples may be destroyed upon the request of a victim. The victim's request for destruction shall be documented by the examination facility and designated storage facility, if used. (25 Ky.R. 2479; Am. 26 Ky.R. 378; eff. 8-16-1999; 37 Ky.R. 1546; 1997; eff. 3-4-2011.)